

USSN: 09/666,928  
Atty. Docket No.: 10188/2  
Amdt. dated October 28, 2003  
Reply to Office Action of July 28, 2003

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### **REMARKS/ARGUMENTS**

Applicants submit the attached Declaration of one of the inventors, Robert A. Migliorini, under 37 C.F.R. §1.132 to distinguish the films of the present invention from the cited prior art. Applicants also submit the Declaration of Marie-France Nothnagle, one of the inventors of U.S. Patent 5,691,043 which was cited by the Examiner in rejecting the claims.

The Specification has been revised as a result of the Applicants finding the Provisional Serial Number was incorrectly listed.

The Applicants respond to the rejections of the claims in the Office Action as follows:

#### **Claim Rejections - 35 USC § 112**

Claims 14, 15, 18 and 19 have been rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim what is meant by the “%” of the various components. Applicants have amended the claims to more clearly state that “%” is “% by weight.”

#### **Claim Rejections - 35 USC § 103**

Claims 13, 14, 16-18 and 20 have been rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent 5,691,043 to Keller et al. (“Keller” or “the ‘043 patent”) in view of U.S. Patent 6,235,143 to Crighton et al. (“Crighton” or “the ‘143 patent”) as evidenced by U.S. Patent 6,503,635 to Kong et al. (“Kong” or “the ‘635 patent”).

The Office Action states at page 3, lines 2-4 that “Keller teaches ethylene-propylene-butylene terpolymer having a melting point in the range of about 115°C to 130°C, meeting a value disclosed by Applicants (column 8, lines 1-12 [of the ‘043 patent]).” This finding confuses the terpolymers disclosed by Keller (col. 8, lines 1-9) and the melting point ranges for copolymers disclosed by Keller (col. 8, lines 10-12). One of ordinary skill in the art who reviewed Keller would find that throughout the specification the term “copolymer” is used to refer to a thermoplastic that contains two monomers and the term “terpolymer” is used to refer to a thermoplastic that contains three monomers. Keller neither teaches nor suggests that the term copolymer is used in the specification to refer to a terpolymer.

The accompanying Declaration by Marie-France Nothnagle, one of the inventors of the ‘043 patent, provides irrefutable evidence that the melting point range listed at column 8, line 12

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of the '043 patent refers to the copolymers identified at column 7, lines 58-67, and not the terpolymers identified at column 8, lines 1-9. The Nothnagle Declaration states at paragraph 10 that:

In the '043 patent, we consistently used the term "copolymer" to refer to a thermoplastic produced by the polymerization of two monomers and the term "terpolymer" to refer to a thermoplastic produced by the polymerization of three monomers. I have reviewed the '043 patent and can confirm that the term "copolymer" is not used to refer to a thermoplastic that includes more than two monomers. Therefore, when column 8, lines 10-12 of the '043 patent refers to "copolymers," I can state unequivocally that it does not refer to ethylene-propylene-butylene terpolymers as the Office Action states.

Accordingly, the melting point range listed at column 8, line 12 of the '043 patent refers to copolymers, and not terpolymers. Therefore, Keller does not teach ethylene-propylene-butylene terpolymers having a melting point in the range of about 115°C to 130°C and does not render the melting point range claimed by the Applicants obvious. Moreover, there is no disclosure of the melting points of the terpolymers used by Keller in the skin layers. Therefore, there is no basis for stating that "Applicants' value of the melting point is within the range disclosed by Keller." Office Action, p. 3, lines 12-13.

The Office Action states at page 3, lines 8-12 that a "melting point of 126°C is not significantly high compared to a value of 122.5°C disclosed by the Applicants and further there is no evidence to show that all the terpolymers from Chisso 7800 or 7700 series would have a DSC melting point significantly higher than the present invention." The difference between a melting point of 126°C compared to a value of 122.5°C is significant since a few degrees difference allows packaging equipment to be operated at significantly higher speeds. The accompanying Migliorini Declaration states that films with a skin layer containing a terpolymer with a melting point of 122.5°C have a competitive advantage over similar films with skin layers containing terpolymers with melting points of 126°C. The Migliorini Declaration states at paragraph 10 that:

In my experience, I have found that lowering the crimp seal MST by only a few degrees is important to customers who purchase oriented polypropylene films for packaging applications. An 8 °F difference in crimp seal MST is important to these customers because, as explained in paragraph 6, it allows packaging equipment to be run at significantly higher speeds which increases

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productivity. Therefore, a film with a crimp seal MST that is 8 °F lower than a competing film has a significant marketing advantage.

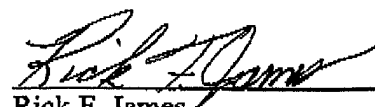
Thus, the 122.5°C melting point of the ethylene-propylene-butylene terpolymer in the bottom skin layer is significantly low compared to prior art structures with a 126°C melting point.

Moreover, Keller does not teach the use of a Chisso terpolymer in the skin layer of a film structure. Keller refers to Chisso ethylene-propylene-butylene terpolymers a total of thirteen (13) times in the '043 patent (col. 4, line 12 and 35; col. 7, lines 7, 8, 11 and 12; col. 12, lines 63 and 64; col. 13, line 2; col. 15, line 8; col. 16, line 23; and Table 4, Examples 30 and 31). Each time Keller refers to a Chisso ethylene-propylene-butylene terpolymer, it is used in a core layer, not in a skin layer. Accordingly, Keller neither teaches nor suggests the use of a Chisso terpolymer in a skin layer.

Applicants respectfully submit that the amendments to the claims have overcome the rejections under 35 U.S.C. 112 and that the arguments made herein, together with the Nothnagle and Migliorini Declarations, have overcome the rejections under 35 U.S.C. 103. The Applicants, therefore, respectfully request that the rejections to the claims be withdrawn. If resolution of any remaining issue is required prior to allowance of the application, it is respectfully requested that the Examiner contact Applicants' undersigned attorney at the telephone number provided below.

Respectfully submitted,

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